HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPSS No. 245 / 2005

Sri Ram Prasad

Vs

State of Uttaranchal
Secretary Ministry Education

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 24.02.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION No. 245 (S/S) OF 2005

Sri Ram Prasad S/o Sri Ramanand Lodhi,
C/o Sunil Kumar R/o P-3, IRI, Colony,
Roorkee, Hardwar. …… Petitioner.

Versus

1. State of Uttaranchal through its Secretary, Ministry of Education, Civil Secretariat, Dehradun.
2. District Inspectors of Schools, Hardwar.
3. Committee of Management, Arya Kanya Inter College, B.T. Ganj, Roorkee, Hardwar through its Manager.
4. Principal, Arya Kanya Inter College, B.T. Ganj, Roorkee, Hardwar through its Manager.

…… Respondents

24.02.2006

Sri Pankaj Miglani, learned counsel for the petitioner.
Learned standing counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Pankaj Miglani, Learned Counsel for the petitioner and Learned Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to consider and grant the appointment to the petitioner on the compassionate grounds.

Briefly stated accordingly to the case of the petitioner, the father of the petitioner was regular employee in Arya Kanya Inter College, B.T. Ganj, Roorkee and working at the post of Mali. He died in harness on 14.04.1976. At the time of the death of the father of petitioner, he was only $4^{1}/_{2}$ years old so he could not apply for the appointment under Dying in Harness Rules and there was no earning member in the family of the Petitioner. The mother of the petitioner had already died much prior to his father's death. Unfortunately, the petitioner had become destitute

after the death of the father as well as his mother as there was no source of livelihood available to the petitioner.

Petitioner has submitted that on 17.09.1998, the petitioner has preferred a representation stating the entire facts but no order was passed. He has submitted that he has also not received the dues of his father.

Standing Counsel has filed the Counter affidavit where it is stated that the application seeking employment can be filed within five years of the death of the employee concerned and the person claiming for appointment under Dying in Harness Rules, should have possessed requisite qualification for the post for which he sough to be appointed. Further he being an illiterate person, he can not be appointed under Dying in Harness Rules.

"Rule 5 of the U.P. Recruitment of Dependants of Government Servants Dying In Harness Rules provides as under :-

5."[Recruitment of a member of the family of the deceased]

(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person –

(i) fulfils the educational qualification prescribed for the post,

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the date of the death of the Government servant;

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement, as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government Servant was employed prior to his death."

The relevant portion of the letter dated 15.11.2003 is quoted below :

"महोदय, आपके कार्यालय के पुत्रांक प्रबन्ध 6852/2003–04 दिनांक 16.09.2003 के संन्दर्भ में निवेनद है कि श्री रामानन्द का स्वर्गवास दिनांक 14.4.1978 का हो गया था। इनके वेतन का भुगतान इनके बैक खाते के द्वारा कर दिया गया था। सामान्य भाविष्य निधि स्कीम उस समय चतुर्थ श्रेणी कर्मचारियों पर लागू नहीं थी। उसके भुगतान का प्रश्न ही नहीं है। सामूहिक जीवन बीमा स्कीम थी उसके प्रपत्र इनका बालिग वारिस न होने के कारण प्रेषित नहीं किये गये थे। उचित कार्यवाही हेतु आपकी सेवा में प्रेषित है।"

The Apex Court in the case of ***Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468*** *has held as under : -*

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship

due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

In the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** *after relying upon the judgment of* ***Sushma Gosain v. Union of India (1989) 4 SCC 468*** *it has been held by the Apex Court as under :-*

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

Therefore, as will appear from the aforesaid judgment that the object of the grant of compassionate appointment is to enable the family to tide over the sudden crisis. The object is to help the deceased family from starvation and not to make a selection. In the same judgment it has also been observed as under:-

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the

legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

The petitioner has also referred the judgment in W.P. 1113 of 2002 (S/B) Deepak Bhatt Vs. State of Uttaranchal where it has been directed to grant of relaxation under the proviso of Rules 5 of the Rules.

As will appear from the aforesaid decisions that the appointment on compassionate ground should not be delayed as it being not a recruitment but its object is to help the deceased family from starvation and further to save from the hardship caused to the family after the death of the bread earner.

In view of the aforesaid facts and circumstances, the respondents are directed to consider the representation of the petitioner within a period of 6 weeks in accordance with law.

Consequently, the writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

24.02.2006
Jain